



July 18, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: WT 11-65, Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations

Dear Ms. Dortch:

On July 15, Harold Feld and John Bergmayer of Public Knowledge (PK), and Alan Pearce, Barry Goodstadt, and Martyn Roetter of Information Age Economics (IAE) met with Jon Baker, Jim Bird, Pat DeGraba, Monica DeLong, Kathy Harris, Renata Hesse, Kate Matraives, Virginia Metallo, Paul Murray, Tom Peters, Joel Rabinovitz, Greg Rosston, Jim Schlichting, and Melissa Tye of the AT&T/T-Mobile transaction team to discuss why the proposed merger should be blocked.

PK and IAE noted that Section 314 of the Communications Act presents a bar to the merger. Under that provision, it is unlawful for any entity engaged in wired or wireless communications to acquire any other such entity when “the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce....” 47 USC § 314. Even as narrowly construed by the Commission, this merger triggers Section 314, as it involves a merger between an American and a foreign company, both of whom carry wired and wireless common carrier traffic internationally. The merger would create a GSM roaming monopoly—leaving AT&T as the only roaming partner available for regional or international GSM customers.¹ Foreign carriers have already submitted evidence that commerce between their countries and the US would be harmed by the proposed merger, because their customers would have to pay more to roam in the US or would not be able to roam at all. In addition, IAE staff noted that a specific international carrier who is aware of the emerging problem with US data roaming in these bands, but was reluctant to come forward and submit evidence for fear of affecting their existing relationship with T-Mobile. International carriers (particularly those in Canada and Latin America) that use HSPA+ technology on the AWS bands would be particularly harmed. Since roaming agreements are usually symmetric, American roamers abroad would be also be harmed by the merger. They would pay higher fees that are the direct result of AT&T’s market power at home. AT&T’s incentive would be to increase the amount of money it collects, not to reduce the amount spent by its customers.

Since in some areas the number of national competitors engaged in international commerce would be reduced to just one, it is necessarily true that the amount of competition

¹ LTE does nothing to abate the problem of roaming monopolies, since different carriers’ LTE systems will not be interoperable. See Sascha Segal, *Verizon LTE Phones Probably Incompatible With AT&T*, PC MAG, July 14, 2011, <http://www.pcmag.com/article2/0,2817,2388526,00.asp>. Furthermore, dual-network phones are unlikely to be manufactured solely to making roaming easier.

would be, at a minimum, substantially lessened. This merger would cause harms that go beyond those affecting international commerce but those harms alone are sufficient grounds to block the merger. The Commission should therefore find that Section 314 applies as a matter of law.

PK and IAE touched on a few other points that further emphasize why the merger should not proceed. They noted that the cash payments and roaming agreements that AT&T has committed to giving T-Mobile in the absence of a merger would go far to cure the supposed reasons why, according to AT&T, T-Mobile is not a strong national competitor. They also questioned how a cash payment of \$25 billion to Deutsche Telekom in Germany could be consistent with AT&T's assertion that the merger would lead to an increase in investment of \$8 billion in networks in the US and emphasized the contradictions between T-Mobile/Deutsche Telekom's statements in early 2011 about its plans for the future and those made at the time of and since the announcement of the proposed merger a mere two months later. They concluded by stating that no conditions or commitments could be enough or could be enforced in practice to mitigate the competitive and public interest harms of the merger.

Respectfully submitted,

/s John Bergmayer
Senior Staff Attorney
Public Knowledge

cc:

Jon Baker
Jim Bird
Pat DeGraba
Monica DeLong
Kathy Harris
Renata Hesse
Kate Matraves
Virginia Metallo
Paul Murray
Tom Peters
Joel Rabinovitz
Greg Rosston
Jim Schlichting
Melissa Tye